

HONOLULU POLICE COMMISSION
City and County of Honolulu
State of Hawaii
Minutes of the Regular Meeting
October 4, 2017

CALL TO ORDER Chair Sword called the meeting to order at 2:00 p.m. on Wednesday, October 4, 2017, in Conference Room A at the Honolulu Police Department Alapai Headquarters

PRESENT Max J. Sword, Chair
Cha Thompson, Vice-Chair
Eddie Flores, Member
Steven H. Levinson, Member
Loretta A. Sheehan, Member

Daniel W. S. Lawrence, Executive Officer
Richard Lewallen, Deputy Corporation Counsel
Erin Marie Yamashita, Secretary

ALSO PRESENT William R. Axt, Acting Deputy Chief
Lynne Uyema, Legal Advisor

ASCERTAINMENT OF QUORUM Counsel Lewallen ascertained that a quorum was present

CHIEF OF POLICE REPORT

Acting Deputy Chief Axt informed commissioners Chief Okimoto was not in attendance due to some personal matters. He then reviewed upcoming events, which the Honolulu Police Department (HPD) will participate in:

- October 4, 2017, is National Coffee With a Cop Day and all eight districts held events
- October 7, 2017, HPD will participate in a keiki and kupuna ID at the Moiliili Hongwanji Temple from 9 a.m. to 1 p.m.
- October 6, 2017, HPD will participate in the Refresh, Rejuvenate, and Reset, which is a senior wellness fair at the Waikiki Community Center from 2 to 4:30 p.m.
- October 28, 2017, National Take Back Initiative sponsored by the DEA, State Attorney General, Department of Public Safety, and HPD. Persons can turn in prescription medication that is expired.

Traffic Statistics

There have been 33 fatalities to date compared to 41 in 2016. Acting Deputy Chief Axt noted that with regard to traffic fatalities 40 percent of traffic fatalities were incidents where speed was a factor. HPD will continue its speeding enforcement.

During the month of September 2017, officers issued 8,381 speeding citations, 780 seat belt citations, 1,200 pedestrian citations, and 704 mobile electronic device citations, and made 367 OVUII arrests.

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Traffic Statistics (Continued)

Acting Deputy Chief Axt reported the pilot project for body-worn cameras is moving forward. One of the vendors has dropped out. HPD has taken delivery of cameras and other necessary equipment last week and logistics are being worked out with the Department of Information Technology to work out the necessary bandwidth needs to support the pilot project as well as the logistics to share the information with other agencies. As traffic stops are being made, officers will use the body-worn cameras to record information which will be shared with the Prosecutors who are preparing for court cases involving citations.

There were some logistical hurdles were the necessity for dedicated internet lines for each charger, evidence software, redaction tools and file sharing.

The body-worn camera team is on schedule to issue the cameras and provide the final training to officers on November 6, 2017, who will be part of the project and begin using the cameras on November 13, 2017.

Vice-Chair Thompson wanted to know what the reasons were for one of the companies dropping out. Acting Deputy Chief Axt informed commissioners they were unable to support the requirements for information sharing—storage of files and redaction of videos. She then asked if it was a lack of experience to which Acting Deputy Axt responded there were logistical items needed to be worked out and the company could not immediately do so.

Commissioner Sheehan wanted to know what the NCIC Audit was about since commissioners received the information notice. She explained that the notice mentioned an audit that the Hawaii Criminal Justice Data Center was conducting an audit of the National Crime Information Center system and wanted some information. Acting Deputy Chief Axt said the audit he is familiar with is HPD currently making sure those who have access are authorized and removing those persons who have left HPD. Commissioners will be updated at the next meeting.

APPROVAL OF MINUTES

Vice-Chair Thompson made a motion to approve the September 7, 2017, meeting minutes. Commissioner Flores seconded the motion.

Discussion: None

Vote to approve: By a unanimous vote, the motion carried.

PUBLIC TESTIMONY

Chair Sword thanked those who will be providing testimony for their participation and provided a reminder of the three minute speaking time limit and that testimony should be directed to the Commission and that testimony is focused on the agenda item, which is the finalists for the position of chief of police.

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Ms. Marjorie Morgan

Ms. Morgan, a retired personnel assistant with the HPD, attend the meeting in support of Mr. Kurt Kendro. Ms. Morgan personally worked with Mr. Kendro when he was part of the accreditation team. She shared he was very professional, community minded, and honest. Having experience working at HPD for many years Ms. Morgan stated that someone from the outside would most likely have a difficult transition into the chief's position; however, Mr. Kendro worked for HPD for 30-plus years knows what it takes to get the job done and will work side by side with officers and civilian employees.

Mr. Alexander Garcia

Mr. Garcia, a lieutenant and 29-year employee with the HPD, attended the meeting to share what type of person he is looking for in the next chief of police and not to advocate for any one individual. He knows most of the applicants and said commissioners have a tough selection to make.

He feels commissioners should look for the best of the best and that his responsibility and those of the community is to let commissioners know what they look for in the next chief of police. Mr. Garcia stated that over the last year many persons have had to serve HPD in an acting capacity and have been able to maintain professionalism during this time. Everyone serving in an acting position have done excellent work and managed the department well.

All applicants are qualified to be the next chief and have the ability to manage, but what HPD needs is a leader not a manager. HPD needs a leader who will represent the HPD's mission statement, he/she should not yield to public pressure, media pressure, political pressure, and be truthful.

Mr. John Kawamoto

Mr. Kawamoto is in attendance representing Hawaii J20, an organization committed to preserving constitutional principles and community values.

On behalf of Hawaii J20 Mr. Kawamoto encouraged the Police Commission to select a new chief who embraces the philosophy of community policing and understands the importance of maintaining a relationship of trust with the population he/she serves.

Mr. Kawamoto shared his concern for the undocumented immigrants and their role in community safety and encouraged Honolulu to become a sanctuary city because undocumented immigrants may be less likely to report crimes or come forward as witnesses because they fear they may be taken into custody and deported. He feels the next chief should be committed to the philosophy of community policing and understands that cooperation with federal immigration enforcement agencies diminishes the ability of the police to ensure the safety of communities.

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Ms. Nancy Bottelo

Ms. Bottelo, President and CEO of Special Olympics, and provided testimony in support of Mr. Kurt Kendro. Throughout her 30 years of experience with Special Olympics, Ms. Bottelo has had the opportunity to know and work with several candidates for the position of chief of police and respect all of them; however, she is in attendance to speak for Mr. Kendro someone she says would be an excellent chief of police because he leads by example.

Ms. Bottelo explained how she first met Mr. Kendro and how he has supported the Special Olympics and his serving in various capacities in the organization and he has garnered a tremendous respect from law-enforcement personnel across the world. She informed commissioners since 1987 he has served as a year-round coach for his rainbow team, a group of adult athletes.

Because he is a good leader and is trustworthy, he would be an excellent chief of police for one of the largest police departments.

Ms. Renee Manfredi

Ms. Manfredi, a member of the Special Olympics Board of Directors and athlete, provided testimony in support of Mr. Kurt Kendro.

She has served on the Board with Mr. Kendro since 2012. Ms. Manfredi stated that Mr. Kendro is very respectful and an effective member who keeps the board updated with Torch Run events and is rarely late for meetings.

Ms. Manfredi acknowledged Mr. Kendro's coaching as respectful in the way he treats the players with respect and dignity. All of the athletes are proud to be a member of his team and work together to give it their all and is what she wants from the next chief of police and that Mr. Kendro is a trustworthy person and a dedicated police officer.

Noelani Craill Naluai

Ms. Naluai was in attendance to also offer support to Mr. Kurt Kendro. She explained she first met Mr. Kendro under sad circumstances and that her cousin was Officer Neville Colburn, who passed away in 2015.

As his long time and close friend, Mr. Kendro stayed in touch with her family even after the funeral services, where the HPD has lacked. She explained HPD has not kept in touch with the family when there are special events honoring fallen officers, such as the naming of the crime investigation building, and that Mr. Kendro has taken it upon himself to consistently show support for the family. She also suggested the department make better efforts when it comes to including families of fallen officers in events.

Ms. Naluai also provided the examples of Mr. Kendro cleaning the law enforcement memorial after it was vandalized, involvement with Special Olympics and MADD, and that he is a police officer's officer and a leader, not a follower.

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Mr. Antonio Williams

Mr. Williams thanked commissioners for allowing him to speak on behalf of Mr. Kurt Kendro. As a 22-year retired veteran military police officer who served as the U. S. Army Garrison of Hawaii Chief of Police for nine years and is now the Chief of Law Enforcement for Installation Management Command. He also explained that his views today are as a kamaaina and citizen and reflect nothing about the military.

Mr. Williams informed commissioners Mr. Kendro was able to establish one unique thing over the 20 years they have know each other as professionals—that the military had a place when it came to law and order and discipline and sharing information. They share the same views and tried to make sure the HPD and military worked well together.

Mr. Williams is also a volunteer for the Special Olympic rainbow team and is a member of the executive council and it is because of Mr. Kendro that he volunteers and that Mr. Kendro is honest and trustworthy.

Ms. Carol McNamee

Ms. McNamee introduced herself and stated she is providing testimony in support of Mr. Kurt Kendro as the next chief of police of the Honolulu Police Department.

She explained she was testifying in two capacities, one as an individual who first met Mr. Kendro when he was a child and her second as the founder of the Honolulu Chapter of MADD (Mothers Against Drunk Driving).

As drunk driving is one the most frequently committed violent crimes in America, MADD has been in the business for fighting this problem for almost 34 years and it has been essential for MADD to work closely with HPD to make progress in the campaign to eliminate drunk driving which Mr. Kendro has done.

Mr. Kendro is a person who will speak about the seriousness of all crimes and who will effectively lead the Police Department in combating crimes. He has a long list of attributes which include the most important traits that qualify him for chief and that he is dedicated, humble, kind and gentle but forceful when he needs to be.

Mr. Barry Tong

Mr. Barry Tong, a sergeant and 32-year veteran with the Honolulu Police Department assigned to the Central Receiving Division, attended the meeting to provide testimony for Ms. Susan Ballard.

Mr. Tong stated he has worked with and for many of the candidates for the position of chief of police; however, he feels Ms. Susan Ballard is the one for the job. She is honest, dedicated and loyal to the HPD and that wherever she has been assigned as an executive officer and now major, all the people she has commanded have been very loyal to her. She has gained the respect of many officers over the years and Mr. Tong feels that as a current member of the Honolulu Police Department she is the best candidate for the job and knows where to take the department into the future to give the department more transparency.

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Mr. Howard Zusman

Mr. Zusman attended the meeting in support of Mr. Kevin Lima as the next chief of police. He has known Mr. Lima who is a retired HPD Assistant Chief and who holds a PhD. in education. He knows Mr. Lima from the Manoa Aikido Club where they both train in Aikido.

Mr. Zusman explained that in the one year he has known him, they have both quickly accepted each other at face value and not solely for what their job titles or social statuses were. He is a constant friend and shares his vast aikido knowledge and good energy.

Besides talking about aikido, they also talk about policing since about half of the adult aikido club are members of the HPD. Mr. Zusman has learned a lot about crime fighting from Mr. Lima and Mr. Taro Nakamura, a lieutenant with HPD.

Mr. Zusman also commended Mr. Lima for his volunteer work at the Manoa Aikido Club with the youth classes and that as a teacher Mr. Lima has a great sense of how life works and grows which makes him a good leader.

Mr. Gary Dworshak

Mr. Dworshak attended the meeting as a personal citizen and provided testimony on behalf of Mr. Thomas Aiu, who he has known Mr. Aiu since they were in high school together.

Mr. Dworshak stated that all the years he has known Mr. Aiu he has always exhibited the a consistent highest-level of character and cares about the people of Hawaii and feels he would be an excellent choice for the next chief of police.

Ms. Nanci Kriedman

Ms. Kriedman from the Domestic Violence Action Center (DVAC), was in attendance and stated she is hopeful that the selection commissioners make is going to make a difference in the lives of island families every time they reach out to the police for help.

She also stated the work at the DVAC is life saving and life altering and partnership with the Honolulu Police Department is essential for the community. Ms. Kriedman is hopeful that the inquiries and the test results and the interviews reflect a commitment to addressing domestic violence effective and appropriately.

Ms. Kriedman stated it is important for the criminal justice system standing beside the DVAC so leadership from the chief will make all the difference in the world and asked commissioners to take her concerns into consideration.

Ms. Lisa Marie Like

Ms. Like is a 16-year veteran of the Honolulu Police Department provided testimony in support of Ms. Susan Ballard. Ms. Like currently works for Ms. Ballard and has work with her prior to her current assignment.

Ms. Like supports and appreciates Ms. Ballard's supervision style as she is very kind, fair, and has outstanding leadership. She enjoys working for Ms. Ballard and that Ms. Ballard is the best candidate for the next chief of police.

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NEW BUSINESS

Report on Actions

Commissioner Levinson reported that at the Executive Session of August 2, 2017 the Commission took action on two cases involving two officers.

Complaint number HPC 17-021, involve done complainant and one officer. The complaint of conduct unbecoming an officer was not sustained.

Complaint number HPC 17-035, involved one complainant and one officer. The complaint of conduct unbecoming an officer was not sustained.

Commissioners also directed the executive officer to close complaint number HPC 17-047 through the filing of a Public Service Report without referral for further investigation, pursuant to Commission Rule 9-1(a), (b), and d(c) as the complaint was not filed within 60 calendar days of the occurrence, is speculative or purely hypothetical and does not involve existing facts, and is not within the jurisdiction of the Commission.

The minutes of the July 5, 2017 executive session were also approved.

Commissioner Levinson then made a motion to accept the report. Commissioner Flores seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

UNFINISHED BUSINESS

Selection Process for the Next Chief of Police

Executive Officer Lawrence reported that staff is working to prepare the dossiers for review for the upcoming interviews.

With respect to the interviews, the dates of interviews will be October 24 and 25, 2017 which is contingent upon squeezing in the seven interviews over a two-day period. EO Lawrence discussed logistical and procedural issues he has discussed with the Department of Human Resources (DHR). A tentative schedule has been put together for interviews of approximately 90 minutes for each candidate and a 15 minute break in between candidates which will allow for the seven interviews in two days and allows for discussion during the afternoon of the second day to deliberate and make a decision should commissioners want to do so. The DHR has indicated that 90 minutes is a good limit for an interview otherwise people may get fatigued; however, he would like to know from commissioners how much time they would like to allow for interviews because it will affect the schedule.

Commissioner Flores stated he thinks one hour is enough. Commissioner Sheehan stated she usually interviews people for eight hours, and that when she does a deposition it could take eight hours and that is when people get fatigued so you can get useful answers.

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Selection Process for the Next Chief of Police (Continued)

Commissioner Sheehan also said interviews may go quickly but hesitates to agree to 90 minutes because she intends to take as much time as she needs to thoroughly question each candidate and she could very easily see a two-hour interview. She also stated that her experience in interviewing is that frequently there is a question, which involves follow-up questions, and that by the third follow up you will actually receive the information you are seeking.

Commissioner Levinson said he tends to agree with Commissioner Sheehan that it is difficult to set an arbitrary time limit for an interview. He further stated that hiring the police chief is probably the most significant function that the City Charter delegates to the Honolulu Police Commission and that this is a decision in which significance cannot be overstated. Commissioners are not simply making a hire as human resources does on a daily or weekly basis, and stressed the importance of taking the necessary amount of time to conduct interviews that all of the commissioners deem satisfactory. Commissioner Levinson said he could not support the imposition of an arbitrary time limit.

Vice-Chair Thompson said applicants would need to be provided the same amount of time to which Chair Sword stated that an interview may not take two hours. Commissioner Flores wanted to know how much leeway would commissioners have to really ask questions to which Chair Sword said he feels commissioners will have quite a bit of leeway in asking questions because the position is an appointed position as opposed to a regular hiring.

Vice-Chair Thompson said after reviewing information and hearing from the public she feels one hour was enough but would go with the majority.

Commissioner Sheehan said she understood Vice-Chair Thompson and that her rough understanding is what has been tested so far has been the candidates executive functioning, ability to organize, ability to communicate, ability to be familiar with policy and procedure, ability to compartmentalize, and to make decisions which are all valid skills commissioners are looking for in a chief of police. Being grateful to the consultant and the assessors, Commissioner Sheehan thinks commissioners are looking for something a little different. She thinks commissioners should be looking for integrity, honor, and leadership which means something different to everyone and that she, personally, is looking for something different. Commissioners may not use two hours but should be cautious and consider two hours.

Commissioner Levinson said that any additional time commissioners take isn't going to be because the candidates want to toot their own horn some more, but commissioners may have questions and want to drill down some and even push a little bit with respect to statements that applicants make in the course of the interviews. Commissioner Levinson has also had the same experience as Commissioner Sheehan in the sense that since he was admitted to practice law in 1972 and has taken a lot of depositions, interrogated a lot of witnesses, and heard the testimony of a lot more in circuit court, and that often the most meaningful evidence or testimony or information comes after one has pushed a little bit which may take some time. Commissioner Levinson then stated that he feels most of the interviews are not going to take two hours.

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Selection Process for the Next Chief of Police (Continued)

Chair Sword informed commissioners he feels there needs to be parameters and suggested that commissioners schedule interviews for two hours to include a short break. Commissioner Flores again stated two hours is too long. Chair Sword understood but there needs to be some sort of schedule.

EO Lawrence asked commissioners if they would be agreeable to add a third day. There was some discussion on the availability of commissioners and Commissioner Flores asked how long the process would take to which Commissioner Sheehan said that commissioners may choose to make phone calls and follow up on things that come up in the course of interviewing and that it is a bad idea to just vote. She then stated commissioner may need time to think, follow up and subpoena documents, if necessary, and that she would take her time with this.

Vice-Chair Thompson stated that everyone would take time but she would not need two or three hours and felt it was important to set a time schedule.

EO Lawrence asked if the dates of October 24, 25 and the afternoon of the 26th was acceptable. After some discussion due to availability of some members, commissioners agreed to conducting interviews on October 23, 24, and 25, 2017. EO Lawrence informed commissioners interviews would be set up two on the first day, three on the second, and two on the last day, which would allow for commissioners to meet with Dr. Farkas on October 23, 2017 and discussion on October 25, 2017.

EO Lawrence then informed commissioners the DHR also recommended commissioners have some questions that are scripted for every candidate to begin the interview. Commissioner Sheehan then said she had read a book on executive hiring and that she would to share the book with anyone interested.

EO Lawrence's goal today was to secure the interview dates and times and commissioners had until October 18, 2017 to make decisions on a script or questions. Chair Sword then asked commissioners to forward their proposed questions to EO Lawrence and he will compile the questions. EO Lawrence also informed commissioners the DHR has also recommended commissioners provide a scoring metric to score the criteria because it would help commissioners remember what was said during the interview and that he would compile the information for presentation to commissioners on October 18, 2017.

Commissioner Sheehan stated that when she participated in the committee to select the federal magistrate they also used that tool and that as soon as the interview was done time was spent immediately writing down strengths, weaknesses, impressions and gave a rough numerical score which was extremely useful to have.

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Proposed Amendments to Honolulu Police Commission Rule 10 and Rule 11

Commissioner Levinson informed commissioners he and Corporation Counsel Donna Leong have not reached an agreement to the proposed amendment to Commission Rule 11.

Commissioner Levinson then reviewed what he has done so far in the process as requested by Chair Sword. He also informed commissioners that he expressed very early to Corporation Counsel Leong that he regarded October 4, 2017, as the deadline for talks. To date they have had one face-to-face meeting on July 29, 2017, and since that time there has been back and forth e-mailing with attached revisions to revisions of proposed drafts.

There have been large gaps of time intervening in between the e-mail communications exclusively as a function of COR's failure to respond in a timely fashion. After a great deal of negotiation toward the third week of August it seemed an agreement was close being reached as to the wording of the proposed amended Rule 11. Commissioner Levinson further stated that he has always been of the view that if a dispute involves legal issues doesn't settle, somebody is not doing their job which is how he approached matters similar when he practiced law and when he was a judge.

Commissioner Levinson informed commissioners he has done his job in this process and after being so close to reaching an agreement, COR responded to him on August 21, 2017, with a version that was simply off the rails. Assuming commissioners would not like to hear his legal analysis, Commissioner Levinson stated that it is his opinion that COR's present proposal is FUBAR and reflects a fundamental, substantive misunderstanding of the purpose of Rule 11, procedural misunderstanding as to how Rule 11 works, a misunderstanding of the law that governs Rule 11, and that he and COR are at an impasse.

Commissioner Levinson prepared a revised draft of the proposed change to Rule 11, which is essentially what was on the table from the beginning plus some additional language that addresses the issue of public access to the contested case hearings that arose in the course of one or more of the Commission's contested case hearings that have been discussed at length. Copies of the draft were circulated among commissioners.

Commissioner Levinson then made a motion that it be substituted for what is currently on the table for rulemaking and that the process move forward.

Commissioner Sheehan seconded the motion.

Commissioner Levinson stated he is unsure if commissioners will be provided with anything from COR but if they are, he anticipates interesting conversation if/when it happens. The changes were explained by Commissioner Levinson as a new Rule 11-4 (e). Chair Sword suggested commissioners review the draft and vote at the next meeting.

Commissioner Levinson then made a motion that the general agenda item remain in place indefinitely until closure is reached and the issue be placed on the agenda for the next meeting for decision making. Vice-Chair Thompson seconded the motion.

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Proposed Amendments to Honolulu Police Commission Rule 10 and Rule 11 (Continued)

Discussion: Commissioner Sheehan has read over Commissioner Levinson's draft and thinks it is 100 percent accurate and comports with the law.

Vote: By a unanimous vote the motion carried.

EXECUTIVE OFFICER'S REPORT

Executive Officer Lawrence reported as of October 3, 2017, the Commission has received 64 complaints to date compared to 67 in 2016. Of the 64 complaints, there are eight pending investigations, 19 complaints have been referred to the HPD's Professional Standards Office, one complaint was withdrawn, and six complaints were serviced with the Honolulu Police Commission's Public Service Report. Six cases have been distributed today in addition to the two held over for decision on October 18, 2017.

Comments by Commissioners

Commissioner Sheehan noted to Commissioner Levinson and Vice-Chair Thompson that since they are both actors, HPD was seeking volunteer actors to assist the 186th Recruit Class Field Exercises. Commissioners asked if what she was referring to, to which Chair Sword said there was an information notice in their mail packets.

EXECUTIVE SESSION

AT 3:15 p.m., Commissioner Sheehan made a motion to enter into executive session to review agenda items pursuant to HRS 92-5(a), subsections (2), (4), (5), (6) and (8): to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; to consult with its attorneys on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities; to investigate proceedings regarding criminal misconduct; to consider sensitive matters related to public safety or security; to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to state or federal law, or a court order.

Commissioner Flores seconded the motion.

Discussion: None.

Vote: By a unanimous vote, the motion carried.

RETURN TO OPEN SESSION

The Commission returned to the open session at 3:35 p.m.

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ANNOUNCEMENTS

Chair Sword announced the next meeting Honolulu Police Commission will be on October 18, 2017 at 2 p.m.

ADJOURNMENT

At 3:37 p.m. Commissioner Flores made a motion to adjourn the meeting. Commissioner Levinson seconded the motion, by a unanimous vote, the motion carried.